



**Innovation, Energy and Mines**

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## **Community Consultation Meeting**

**Date: July 20, 2010**

**Time: 10:00 a.m.**

**Place: York Factory Learning Institute**

The Government of Manitoba will be participating in a community consultation with York Factory First Nation on the issues of mineral exploration licences and work permits to carry out exploration in the region. There will be a presentation on the business of mineral exploration and mining and a question and answer period. The Chief and Council invite all community members to attend the meeting.



## **Community Consultation Meeting**

**Date: July 21, 2010**

**Time: 10:00 a.m.**

**Place: York Factory Learning Institute**

The Government of Manitoba will be participating in a community consultation with York Factory First Nation on the issues related to the Kelsey Rerunning Project and other issues related to Manitoba Hydro. There will be a presentation on the Project and other issues and a question and answer period. The Chief and Council invite all community members to attend the meeting.

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## **Message from Chief and Council**

Tansi!

We have been very busy since we were elected in April of this year to be your political representatives. We thank you for the honor!

This informational newsletter is provided to you to inform you of your right to be consulted on any infringement of your aboriginal and treaty rights by any government action. The newsletter provides a summary of all current discussions we have initiated on your behalf. It is intended to keep all our members abreast of developments we are currently engaged in with the Province of Manitoba. We will continue to provide updates in the months ahead.



The Chief and Council hold steadfast that any infringement of our rights will not be tolerated and governments will be held accountable for trespasses in our traditional territory. We will hold them to the principle that the federal and provincial governments must consult with all our members on any and all licences, permits or activities within our traditional territory and we must protect our lands and resources for future generations.

We look forward to seeing you at the community meetings being held on July 20th, and July 21st, 2010 in York Landing, Manitoba.

Ekosi,

Chief and Council

**The Crown's Duty to Consult:** The recognition and affirmation of Treaty rights in the *Constitution Act, 1982* has resulted in the Supreme Court of Canada's recognition that upholding the "honour of the Crown" and achieving a reconciliation of the original Aboriginal title are continuing obligations of the federal and provincial governments. The Supreme Court and other courts have confirmed the constitutional duty of the Crown to consult, justify and accommodate a Treaty First Nation whenever an action or decision of the Crown may infringe or adversely affect an aboriginal or Treaty right.

**Crown-First Nation Consultation Process:** The duty to consult is grounded in the honour of the Crown. Treaty First Nations and governments must work to jointly identify any infringements or adverse effects of aboriginal or Treaty rights through the process as set by the Supreme Court of Canada and other courts. Of central importance to this process is the Traditional Knowledge and the traditional land use and occupancy information of Treaty First Nations. Treaty First Nations and governments must now establish Crown-First Nation Consultation Protocols or Agreements to guide and provide for the conduct of the Crown-First Nation consultation and accommodation process where either a First Nation or the Crown requests the conduct of the consultation process.



**Justification and Accommodation:** Aboriginal and Treaty rights may only be infringed where there are constitutionally valid reasons for doing so. The Supreme Court of Canada has established standards to be followed during a Crown-First Nation consultation process to determine whether any potential infringement of aboriginal and Treaty rights may be justified. Where any potential infringement may be found to be justified, the effect of these infringements on First Nations must be accommodated. Accommodation measures can include the negotiation of Impact and Benefit Agreements and Revenue Sharing as well as terms and conditions to be included in permits and licences issued under federal and provincial laws. Accommodation measures can also include innovative "legacy" measures that provide long-lasting benefits to affected First Nations that may be unrelated to the nature of the proposed decision or action.

**Implementing Accommodation Measures:** First Nations and the Crown must also be consulted to ensure that measures to prevent infringements or to accommodate justifiable infringements are being implemented and are effective. First Nations and the Crown will need to work together to establish effective non-derogation provisions in laws and to reform statutory and regulatory frameworks to provide for both the protection of aboriginal and Treaty rights and for the implementation of accommodation measures.

**Establishing Relationships with the Governments:** As symbolized by the handshake depicted on the Treaty Medal, there must be an effective and ongoing relationship between the Crown and Treaty First Nations in order to give life to the Treaty relationship in the 21<sup>st</sup> Century.

## **Crown-First Nation Consultations with the York Factory First Nation**

The York Factory First Nation has issued a formal "Notice of Demand for the Conduct of a Crown-First Nation Consultation" or has requested engagement regarding the following matters:

### **Manitoba Hydro Kelsey Rerunning Project**

In September 2006, Fisheries and Oceans Canada (DFO) initiated an environmental assessment of the Kelsey Rerunning Project under s. 5 of the *Canadian Environmental Assessment Act* because Fisheries and Oceans Canada may issue a permit or license under ss. 35(2) and s. 32 of the *Fisheries Act*. DFO officials have advised York Factory that Canada intends to conduct a separate Crown Consultation with affected aboriginal communities, including York Factory. On November 19, 2007, the York Factory First Nation issued a "Notice of Demand for the Conduct of a Crown-First Nation Consultation" regarding the Kelsey Rerunning Project. Manitoba recently advised York Factory that Manitoba wishes to issue authorizations for the Kelsey Rerunning Project in July, 2010. York Factory has requested detailed information, including on fish passage and fish mortality.

### **Mineral Exploration Licence No. 367B**

On October 24, 2008, the York Factory First Nation issued a demand for the conduct of a Crown-First Nation consultation regarding an application for Mineral Exploration Licence 367B. However, Manitoba issued Mineral Exploration Licence 367B effective October 15, 2009 without having first consulted and accommodated York Factory. On May 21, 2010, the York Factory First Nation wrote the Director of Mines to demand that Manitoba "*immediately rescind, revoke or withdraw MEL 367B due to the failure of the Crown to have first engaged the York Factory First Nation in a process of consultation, justification and accommodation prior to purportedly issuing MEL 367B to be effective October 15, 2009.*" The holder of Mineral Exploration Licence 367B has also made applications for Work Permits, the approvals of which are subject to the Crown-First Nation Consultation process.

### **Designation of the Kaskatamagan Wildlife Management Area**

#### **Designation of the Kaskatamagan-Sipi Wildlife Management Area**

It is the position of York Factory that Manitoba continues to owe a duty to consult York Factory regarding Manitoba's unilateral designations of the Kaskatamagan and Kaskatamagan-Sipi Wildlife Management Areas and the establishment of protective regulations in the fall of 2009.

### **Manitoba Hydro Request for a Final Licence for the Churchill River Diversion Project**

Manitoba Water Stewardship has engaged York Factory in a Crown-First Nation consultation regarding Manitoba Hydro's request for a Final Licence for the Churchill River Diversion Project.

### **Comprehensive Crown-First Nation Consultation Agreement**

York Factory has requested that Manitoba and York Factory develop a Comprehensive Crown-First Nation Consultation Agreement to guide the conduct of the consultation and accommodation process between Manitoba and York Factory. The development of this agreement will be in accordance with a process agreed to between York Factory and Manitoba and supported with funding provided by Manitoba to York Factory for this purpose.